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PUC PROJECT NO. 51830

REVIEW OF CERTAIN RETAIL ELECTRIC CUSTOMER PROTECTION RULES	§ § § §	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

TEXAS ENERGY ASSOCIATION FOR MARKETERS' RESPONSE TO REQUEST FOR COMMENTS ON PROPOSAL FOR PUBLICATION

Pursuant to Public Utility Commission of Texas ("Commission") Staff's Request for Comments, attached are comments filed on behalf of Texas Energy Association for Marketers ("TEAM")[1] to the request for comments regarding Staff's proposal for publication implementing House Bill 16 and portions of Senate Bill 3 (the "Proposed Rule"). TEAM appreciates the effort of Staff to draft proposed rules to implement that legislation. TEAM looks forward to working with the Commission and other interested stakeholders in reaching final rule language.

I. OVERVIEW AND EXECUTIVE SUMMARY

Structurally, beginning on the following page, TEAM first presents a bullet-point executive summary in this Section I of these comments. TEAM's responses to the two questions for comment are addressed in Section II. TEAM then sets forth its comments and changes[2] to the proposed amendments to the rules in 16 TAC § 25.43, 16 TAC § 25.475, 16 TAC § 25.479, and 16 TAC § 25.499 in Section III.[3] TEAM has made an effort in these comments to address the most fundamental issues raised by the proposed rules and questions. In general, TEAM prioritizes the maintenance of the customer experience in the market.

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[1] TEAM members participating in these comments are: AP Gas & Electric, Chariot Energy, Constellation NewEnergy, Demand Control 2, Energy Harbor, Fulcrum Energy d/b/a Amigo Energy, Gexa Energy, Hudson Energy Services, Iberdrola Solutions, Just Energy, NRG Energy, Inc., Rhythm, Southern Federal Power, SPG Energy, and Tara Energy.

[2] When showing the changes, the Proposed Rule's modifications to the existing rules are shown, in black single underline and single strikethrough. TEAM's revisions to the Proposed Rule are then shown on top of the Proposed Rule's proposed modifications in red (or green) double underline and double strikethrough.

[3] All references are to sections of 16 Texas Administrative Code (TAC), as proposed to be modified for continued reference in the rule. Herein, the proposed rule number and section will be used for ease of reference.

Executive Summary

COMMENTS ON PROPOSED RULE:

Section 25.43

- Note that the standard terms of service documents linked in subsection 25.43(f)(1) will need to be updated in accordance with the revised rule.

- Maintain the POLR formula that includes the RTSPP variable for medium non-residential customers.

- Revise the residential and small non-residential POLR formulas as follows:

    - Modify the LSP customer charges so that residential customers' charge is $0.09 per kWh, and small non-residential customers' charge is $0.05 per kWh; and

    - Modify the maximum energy charge to be calculated as the average of the actual RTSPPs for the customer's load zone for the previous 12-month period ending September 1 of the preceding year (historical average RTSPP) multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. If the average RTSPP in the 30 days preceding the transition to a POLR rate is at least twice the historical average RTSPP, the LSP energy charge must be the historical average RTSPP multiplied by the number of kWhs the customer used during that billing period and further multiplied by 175%.

- Revise subsections 25.43(m)(A)(iii) and (B)(iv) so that customers in the same TDU territory will not have different EFL rates.

- Revise subsections 25.43(m)(A)(iv) and (B)(v) to clarify that the usage information is provided to the POLR by the TDU.

- Revise the "must" in subsection 25.43(t)(2)(G) to a "will" or "plans to."

- Following this rulemaking, revise subsection 25.43(t)(3)(b) to match accordingly.

Section 25.475

- Revise section 25.475 to make clear that the new expiration-notices provisions only apply to new enrollments or re-enrollments, as set forth in House Bill 16.

- Eliminate the proposed additions of ancillary service charges to definitions of fixed rate product and price in subsections 25.475(b)(5) and (b)(8). Maintain existing definitions of those terms.

- Eliminate the proposed additions of references to the Acknowledgment of Risk ("AOR") document in section 25.475.

- Alternatively, if AORs for other products and customer classes are included, allow for the AOR to be in the EFL for residential and small commercial customers.

- Make a conforming revision to section 25.475(e)(1) concerning electronic communications.

- Revise subsection 25.475(e)(2) to comport with House Bill 16 and limit the new fixed rate product expiration-notice requirements to residential customers only.

- Add language to subsection (e)(2)(A) to promote that the contract expiration notices are sent to customers within a window that the customers would most benefit from. Specifically, TEAM proposes that for contracts with longer terms (e.g., 12, 24 or 36 months), that the REP be allowed to send the first contract expiration notice no later than 3 months prior to the contract end date.

- Revise subsection (e)(2)(C) to conform with subsection (c)(3)(E) to clarify that the "sufficient expiration notice" referenced is the final notice of contract expiration.

- Add "visible" back to subsection (e)(3)(B), which appears to have been struck in error.

- Include in subsection 25.475(e)(3)(C)(vi) language like that in subsections (e)(3)(C)(v) and (e)(3)(C)(vii) that clarifies the information is to be provided in the final notice.

- Eliminate the reference to an AOR from subsection 25.475(e)(4)(C), because any AOR requirement beyond House Bill 16 should be included in the EFL.

- As to subsection 25.475(h), to promote consistent, clear, and standardized messaging from the utilities where possible, revise the proposed rule to have the information utilities are required to develop and make available at a website address be authorized by the Commission, after opportunity for REP input, rather than required by September 1, 2021, a date prior to rule adoption.

- Strike proposed subsection 25.475(j) or, in the alternative, revise subsection 25.475(j) to allow the AOR to be provided in the EFL.

Section 25.479

- For the newly proposed public service notices set forth in subsections 25.479(d)(1)-(4), propose alternate timing so that notices are being provided in bills that are less "crowded."

Section 25.499

- Eliminate AOR requirement for products other than wholesale indexed products.

II. QUESTIONS FOR COMMENT

Comments were requested on the following questions related to the Proposed Rule:

1. Should the maximum rate for provider of last resort service that is charged by a large service provider to a residential customer in proposed §25.43(m)(2)(A)(iii) and small and medium non-residential customers in proposed §25.43(m)(2)(B)(iv) include a safety threshold to prevent the energy charge from increasing by more than a certain percentage on a year-to-year basis? If so, what is an appropriate safety threshold?

The proposed formula for default Provider of Last Resort ("POLR") service is an average of real time index prices from the year previous as of September 1. It includes a "safety threshold" of 20% from the prior year. TEAM does not object to this threshold if there is a corresponding safety relief that provides retail electric providers ("REPs") with an ability to recover its costs for power procured at the last minute on the real time market for new POLR customers.

The proposed mechanism based on the prior year's average of real time prices is not necessarily reflective of costs. However, it does provide some regulatory certainty benefits of providing a known price cap that is relevant for services such as pre-paid service. However, it remains important to the viability of products such as prepaid products that any alternative price adjustment mechanism for POLR not be a justification for a starting POLR rate that is too low.

2. Do the acknowledgement of risk requirements in proposed §25.475(c)(3)(G) and §25.475(j) provide adequate customer protections for residential and small commercial customers that enroll in indexed retail electric products and retail electric products that allow for the pass-through of ancillary service charges? If not, should these products be prohibited for residential and small commercial customers?

In response to Question No. (2), TEAM answers yes as to adequate customer protection, as explained below.

As reflected in TEAM's alternative proposed changes to these provisions, the acknowledgment of risk ("AOR") (if required) should appear in the Electricity Facts Label ("EFL"). Including in the EFL some terminology that is similar to the AOR should be sufficient,

and the products should not be prohibited from residential and small commercial customers. It should also be made clear that this language only applies to indexed products that are tied to some potentially volatile third-party index. Unlike the ERCOT real time settlement price point ("RTSPP") that was fixed by regulatory action, most competitive market commodity indices do not carry the same type of volatility that was experienced in Winter Storm Uri.

For example, the NYMEX products referenced by Commissioner Cobos at the July 29, 2021 open meeting do not carry anything near the same type of volatility as the wholesale indexed products that are banned by House Bill 16 for residential and small commercial customers. In addition, customers have other protections regarding disclosure of price for indexed products, including: the EFLs must show a total average price that results from a reasonable range of values to the inputs to the pre-defined pricing formula (*see* 16 Tex. Admin. Code § 25.475(g)(2)(B)), and that the EFL shall include a website and phone number customers may contact to determine the current price (*see* 16 Tex. Admin. Code § 25.475(g)(2)(F)).

The language as written may need some adjustments, so as not to cause unnecessary alarm for index products. These products have been in place for years, with overall customer satisfaction.

The legislature only banned *real time wholesale* indexed products, not other index products. Many indexed products are not tied to the volatility of a commodity index, and provide tremendous benefits to customers. Further, indexed products are a necessary tool to design rates that are important for development of customer-centric innovations.

Banning certain products stifles competition and should not be done unless a true necessity exists. Products indexed to NYMEX or gas prices are not likely to be as volatile as regulatory fixing of the RTSPPs during Winter Storm Uri. The fact that customers choose them indicates

that they find the products appealing. Until recently, the ancillary service charges also did not seem that volatile.[4]

III. COMMENTS ON RULE AMENDMENTS

A. Changes to Proposed Rule 25.43(f)(1) – related to terms of service documents.

TEAM notes that the standard terms of service documents for each class that are linked under this subsection will need to be modified to match the rule as adopted. Additionally, relating to the terms of service linked under 25.43(f)(1)(D), the following sentence in the terms of service does not currently match the rule, and RTSPP should be changed to "energy charge," as follows: "The energy charge~~RTSPP~~ shall have a floor of $7.25 per MWH."

B. Changes to Proposed Rule 25.43(m)(2) – related to POLR formulas.

In developing the POLR rate, if it is too low, it is contrary to the intent of POLR as a short-term rate or "last resort," and could interfere with the competitive market. The POLR rate actually serves multiple purposes. In addition to providing a cap during mass transition events, the POLR rate also provides a cap on pre-paid prices per existing 16 Tex. Admin. Code § 25.498(c)(15) and PURA § 39.107(g). Prepay is a valuable product offering for customers that allows them to actively manage their electricity bill and provides an option for those without good credit to avoid a deposit. However, with no deposit, and especially for month-to-month products and potential disconnection

[4] As set forth in TEAM's comments in response to the questions on market design in Project 52373, as well as in TEAM's comments above, ERCOT has begun a new treatment of ancillary services as a substitute for reserves, which has increased the volatility (and breadth) of this category of costs. If this is going to continue, then a broader market design solution is needed, and those functions that are being labeled as "ancillary services," but that are really reliability measures, should instead be appropriately relabeled and socialized in a competitively neutral way that can be reasonably priced into customer contracts with more stability.

moratoriums, there can be added risk for providing those products. POLR pricing that is too low may affect REPs' ability to offer prepaid pricing.

Importantly, a POLR product is required to be offered even outside of mass transitions per PURA § 39.106(c). If it is *lower* than market-based offers, it may turn into a product that REPs lose money on and that impacts their ability to provide service on through other products that incorporate their costs and pricing structure.

Additionally, in mass transitions, the POLRs are taking on the customers for which it can be difficult or impossible to hedge, and likely at times that energy prices are higher than normal. It is important that the POLR rate be developed in consideration of those risks.

The proposed pricing for residential customers is a formula that essentially is 5% lower than the current formula for minimum prices (aside from load zone considerations, and lower for certain customers where the highest load zone average is no longer proposed for use). The proposed pricing for small-non-residential customers and medium non-residential customers is essentially the current formula for minimum prices (aside from load zone considerations, and lower for certain customers where the highest load zone average is no longer proposed for use). Due to the extreme real time prices during the February winter storm, for 2022 these formulas may result in a higher POLR rate, however after September 2022, the proposed formula may produce a lower rate than will provide sufficient headroom for other products. While people generally think of the POLR rate as a high price, in recent years, that has not necessarily been the case.

Further, the formula does not account for ancillary service costs which may be problematic if they continue to be as volatile as they have been this year. The rule should permit a pass through of ancillary service charges in certain instances depending on the determination in the customer protection rules.

Thus, TEAM recommends revising the proposed POLR rule requirements for residential customers and small non-residential customers as set forth below.

- Modify the LSP customer charge, with residential customers being set at $0.09 per kWh, and small non-residential customers being set at $0.05 per kWh; and
- Calculate the maximum energy charge as the average of the actual RTSPPs for the customer's load zone for the previous 12-month period ending September 1 of the preceding year (historical average RTSPP) multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. If the average RTSPP in the 30 days preceding the transition to a POLR rate is at least twice the historical average RTSPP, the LSP energy charge should be the historical average RTSPP multiplied by the number of kWhs the customer used during that billing period and further multiplied by 175%.

For medium non-residential customers, there is no clear reason why they should be grouped with the small non-residential customers when House Bill 16's ban on RTSPP does not apply to them. Similar to the large commercial customers, for whom the existing POLR formula can remain in place, the existing rule could be maintained for medium non-residential customers as well. To do so, the pricing for the classes should be broken out separately within the rule.

Additionally, TEAM proposes modifications to Proposed Rule subsections 25.43(m)(2)(A)(iii) and (B)(iv) related to TDU territory concerns. As drafted, the Proposed Rule would result in customers in the same TDU territory having different EFLs rates because the Proposed Rule specifies that energy charge pricing will be based on the customer's load zone. This should be modified. Each TDU area covers 2-3 load zones. It is market standard for EFLs to be provided to customer based on the customer's TDU territory. It would be confusing to

customers and likely to the various call centers that would need to explain it, for customers to have to be mapped to a load zone to know which EFL applied to them. This can be remedied by using the current approach for the minimum charge calculations - the load zone partially or wholly in a service area with the highest average.

Finally, TEAM proposes that subsections 25.43(m)(2)(A)(iv) and (B)(v) be revised to clarify that "[n]umber of kWhs the customer used" is based on usage information provided to the POLR by the TDU. Further, this information may not necessarily be interval data, as a premise may have a non-standard meter.

TEAM proposes changes regarding all these issues as to subsection 25.43(m)(2) as set forth below.

TEAM's redlined changes to Proposed Rule 25.43(m)(2):

(m) **Rates applicable to POLR service.**

(1) . . .

(2) Subparagraphs (A)-(D~~C~~) of this paragraph establish the maximum rate for POLR service charged by an LSP. . . .

(A) **Residential customers**. The LSP rate for the residential customer class ~~shall~~must be determined by the following formula:

LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used

Where:

(i) Non-bypassable charges ~~shall~~must be . . . .

(ii) LSP customer charge ~~shall~~must be $~~0.06~~ 0.09 per kWh.

(iii) LSP energy charge ~~shall~~must be the ~~sum~~average of~~ver~~ the actual Real-Time Settlement Point Prices (RTSPPs) for the

applicable~~customer's~~ load zone for the ~~billing period hourly average of the~~ previous 12-month period ending September 1 of the preceding year (the historical average RTSPP)~~'s of the actual hourly Real Time Settlement Point Prices (RTSPPs) for the customer's load zone that is~~ multiplied by the number of kWhs the customer used during that ~~hour~~billing period and ~~that is~~ further multiplied by 125~~120~~%. If the average of the actual RTSPPs for the applicable load zone for the 30 days preceding the transition to a POLR rate is at least twice the historical average RTSPP, the LSP energy charge must be the historical average RTSPP multiplied by the number of kWhs the customer used during that billing period and further multiplied by 175%. The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under this calculation.

(iv) ~~"Actual hourly RTSPP" is an hourly rate based on . . .~~ "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU~~either interval data or on an allocation of the customer's total actual usage to the hour based on . . . billing period~~.

(B) **Small ~~and medium~~ non-residential customers**. The LSP rate for the small ~~and medium~~ non-residential customer class~~es~~ must be determined by the following formula:

LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

(i) Non-bypassable charges ~~shall~~must be . . . .

(ii) LSP customer charge ~~shall~~must be $~~0.025~~ 0.05 per kWh.

(iii) LSP demand charge ~~shall~~must be . . . .

(iv) LSP energy charge ~~shall~~must be the ~~sum~~average of~~ver~~ the actual RTSPPs for the applicable~~customer's~~ load zone for the ~~billing period of the actual hourly~~previous 12-month period ending September 1 of the preceding~~previous~~ year (the historical average RTSPP)~~'s actual RTSPPs, for the customer's load zone that is~~ multiplied by the number of kWhs the customer used during that ~~hour~~billing period and ~~that is~~ further multiplied by 125%. If the average of the actual RTSPPs for the applicable load zone for the 30 days preceding the transition to a POLR rate is at least twice the historical average RTSPP, the LSP energy charge must be the historical average RTSPP multiplied by the number of kWhs the customer used during that billing period and further multiplied by 175%. The applicable load zone will be the

load zone located partially or wholly in the customer's TDU service territory with the highest average under this calculation.

(v) ~~"Actual hourly RTSPP" is an hourly rate based on . . .~~ "Number of kWhs the customer used" is based on usage data, and demand data, where applicable, as provided to the POLR by the TDU~~either interval data or on "an allocation of the customer's total actual usage to the hour based on . . . billing period~~.

(C) **Medium non-residential customers**. The LSP rate for the medium non-residential customer class must be determined by the following formula:

LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

(i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge must be $0.025 per kWh.

(iii) LSP demand charge must be $2.00 per kW, per month, for

customers that have a demand meter, and $50.00 per month for customers that do not have a demand meter.

(iv) LSP energy charge must be the sum over the billing period of the actual hourly RTSPPs, for the customer's load zone that is multiplied by number of kWhs the customer used during that hour and that is further multiplied by 125%.

(v) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.

(vi) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.

(vii) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge

must be the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology must apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

(D~~C~~) **Large non-residential customers**. . . . (no changes)

C. Changes to Proposed Rule 25.43(t) – conformity changes.

TEAM suggests revision to the proposed "must" in subsection 25.43(t)(2)(G) because it does not make sense, and should be a "will" or "plans to." Second, TEAM notes that there is notice language in subsection 25.43(t)(3)(b) that may no longer be applicable after this rulemaking, and should be revised to match the characteristics of the final pricing: "a statement that the price is generally higher than available competitive prices."

TEAM's redlined changes to Proposed Rule 25.43(t):

(t) **Notice of transition to POLR service to customers.** . . . .

(2) . . .

(G) If applicable, a description of the activities that the REP plans to~~must~~ use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable

payment arrangements with the REP; and . . .

(3) . . .

(B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (m)(2) of this section, a statement that the price is generally higher than available competitive prices~~, that the price is unpredictable, and that the exact rate for each billing period must not be determined until the time the bill is prepared~~;

D. Changes to Proposed Rule 25.475(a) – related to applicability/effective date of expiration notices.

As published, the Proposed Rule indicates an applicability date of September 1, before the rule will actually become effective under the Administrative Procedure Act ("APA"). REPs acknowledge the applicability of the terms of House Bill 16 apply to contractual enrollments or re-enrollments on or after September 1, 2021. To the extent that the final rule includes amendments with requirements that exceed the statutory terms of House Bill 16, the requirements to comply with the specific terms of the rule should be effective for contracts entered on or after the effective date of the rule. In addition, Senate Bill 3 indicates applicability after the Commission rules implementing the statute. Pursuant to that statute, the Commission is required to adopt rules implementing that statute no later than December 2021. Accordingly, changes related to Senate Bill 3 should apply no earlier than the effective date of the rulemaking under the APA.

In addition, the rule as proposed would require a change in the contract notice period for all contracts in effect as of September 1, 2021 in conflict with the underlying statute. Section 3 of House Bill 16 made clear that its changes to Texas Utilities Code Section 39.112 related to

expiration notices only apply to new enrollments or re-enrollments, not existing customers. Specifically, Section 3 of House Bill 16 provides:

> The changes in law made by this Act apply only to an enrollment or re-enrollment of a customer in a retail electric product that is executed on or after the effective date of this Act. **An enrollment or re-enrollment of a customer in a retail electric product that is executed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.**

That House Bill 16 did not intend to affect expiration notices for existing customer contracts makes operational sense. Without adherence to Section 3, retail electric providers ("REPs") would be put in the position of sending expiration notices beginning on September 1 and it would be impossible to comply with the requirement that three expiration notices be issued at the end of the contract. To require REPs to try to craft an expiration notice system to catch all existing customers no matter where they are at in the contracts would be onerous, and for some customers who are already near to expiration, impossible. The Proposed Rule requires the expiration notice requirement would begin on September 1, but it does not make the express distinction required by House Bill 16 that the new expiration notices requirement will only apply to new enrollments or re-enrollments. In addition, there is no time allowed for REPs to implement the changes required to contracts and other documents. A three-month period for such implementation following the effective date of the rulemaking seems reasonable. Thus, TEAM proposes that the adopted rule be revised as set forth below.

TEAM's redlined changes to Proposed Rule 25.475(a):

§25.475. General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers.

(a) Applicability. The requirements of this section apply to retail electric providers (REPs) ~~and aggregators, when specifically stated,~~ in connection with the provision

of service and marketing to residential and small commercial customers. ~~This section is effective April 1, 2010.~~ When specifically stated, the requirements of this section apply to brokers, aggregators, and transmission and distribution utilities (TDUs). This section is effective for contracts entered into on or after the effective date of this rulemaking~~September 1, 2021~~. REPs must implement conforming changes to contracts and documents no later than three months following the effective date of this rulemaking. REPs are not required to modify contract documents related to contracts entered into before this date~~, but shall~~must ~~provide notice of expiration as required by subsection (c) of this section~~. Contracts entered into prior to this date~~September 1, 2021~~ must comply with the provisions of this section in effect at the time the contracts were executed.

E. Changes to Proposed Rule 25.475(b) and (c) – related to "fixed rate product" and "price" definitions and removal/modification of AOR provisions related to products other than wholesale indexed products.

TEAM opposes the proposed additions to the definitions of "fixed rate product" and "price" in Proposed Rule section 25.475(b)(5) and 25.475(b)(8).

The Proposed Rule calls out a particular type of recurring charge in the definition of "price." Ancillary services are already treated as recurring charges and have been included in price disclosures under the rule since adoption. The existing definition of "fixed rate product" has been in place for years and has worked. Making changes to this definition will only create confusion. Indeed, the proposed changes would cause the definition to depart from the statutory definition, which the legislature did not change. The rules' existing definition of "fixed rate product" matches the definition in Texas Utilities Code § 39.112, subsection (a). The legislature

opened up § 39.112 and made significant amendments to it, via House Bill 16. Amendments were made to almost every subsection. However, the legislature did not touch subsection (a) at all, and left the existing definition intact. The legislature certainly did not rewrite the definition or the manner in which the Commission treats fixed price products.

While specifying ancillary services as one of many recurring charges is unnecessary, the Proposed Rule leaves a question as to treatment of future changes in ancillary service definitions that affect quantity or type of ancillary services whose cost may be uplifted to load serving entities, including REPs. To the extent the Proposed Rule intends to change the treatment of changes ancillary service quantities or definitions, that would be incongruent and incompatible with the existing rule that is well beyond any change specified in the statutes.

Recently ERCOT Staff has instituted major shifts in what constitutes ancillary services and the manner in which the quantity of ancillary service obligation placed on REPs is set. This has abruptly and significantly increased costs due to ERCOT's recent decisions to take more "conservative" approaches, but to carry them out by using additional ancillary services as a substitute for increased reserves—something that has never been done before. When ERCOT creates new categories of costs or fees beyond the REPs' control—especially those related to procuring capacity for reliability, such as those stemming from ERCOT's new treatment of ancillary services as a reserves substitute—the REPs should not be prohibited from passing that charge through simply because it was labeled as an ancillary service. Contrary to the manner in which ERCOT has recently used them, ancillary services have historically been designed to cover unanticipated forecast error in the amount of load on the system and the short-term risk of the sudden loss of a generation unit. Now, ancillary services does not mean what it used to. Regulatory decision-makers have seemingly given ancillary services a new meaning and use. This type of

change increases costs beyond a REP's control and should be able to be included in rates just like changes in the TDU tariffs or ERCOT System Admin Fee can be passed on.

Thus, the interjection of ancillary services into the existing definitions creates unnecessary complication and confusion. Further, because it is such a government-malleable charge, it will result in takings from REPs. There cannot be a scenario where, on one side of the equation, the government or ERCOT can step in and create a new ancillary services charge or use ancillary services in an unprecedented manner, but the other side of the equation says that REPs cannot pass that new associated charge through or recover it. TEAM recommends that the Proposed Rule's additions to the definitions of "fixed rate product" and "price" be rejected, and that the existing definitions be maintained.

Second, TEAM proposes that the references to an Acknowledgment of Risk ("AOR") document in section 25.475 pertaining to residential and small commercial customers be revised as discussed here. House Bill 16's language concerning AORs is confined to large commercial customers with wholesale indexed products that are tied to the real-time settlement point price for electricity. The legislation did not specify an AOR requirement for any other customer class or any other product. The legislature could have enacted a broader AOR requirement, but did not, and the statute's clear limits cannot be overridden with a rulemaking. However, if the Commission decides to expand the new regulations beyond the terms of the statute, TEAM requests that any language specific to acknowledging risk for an indexed product for residential and small commercial customers be included in the Electricity Facts Label ("EFL") for those customers. The Commission rules have worked to ensure uniformity and clarity of all aspects of a retail electric product for residential and small commercial customers in the EFL. This document is the primary

reference for customers comparing products. The EFL would be the appropriate place for any such disclaimer.

Requiring a separate AOR step on the enrollment process that is unique to a single category of rate offerings could be highly disruptive and costly for REPs to implement. Given the fact that this proposed acknowledgement is not statutorily required, the regulatory burden of such a change should be considered.

Thus, TEAM primarily proposes eliminating all references to an AOR document in section 25.475, including in the following subsections: 25.475(b)(1), (b)(2), (c)(1)(A), (c)(1)(C), (c)(1)(D), and (c)(2)(A), and striking 25.475(c)(3)(G) entirely.

Alternatively, if rules are promogulated that require an AOR for product types other than wholesale indexed products, TEAM continues to urge removal of requirements for an AOR in Proposed Rule sections 25.475(b)(1), (b)(2), (c)(1)(A), (c)(1)(C), (c)(1)(D), and (c)(2)(A), because the AOR should be part of the EFL. Further, TEAM proposes modifying Proposed Rule subsection 25.475(c)(2)(G) (in the event it is not struck) to provide that the AOR can be included in the EFL.

TEAM's redlined changes to Proposed Rule sections 25.475(b) and (c) relating to all of the issues outlined above follow.

TEAM's redlined changes to Proposed Rule 25.475(b):

(1)	**Contract --** The Terms of Service document (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), and~~and~~ the documentation of enrollment pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider)~~, and, if applicable, the Acknowledgement of Risk (AOR)~~.
(2)	**Contract documents --** The TOS, EFL and ~~and~~, YRAC~~, and, if applicable, AOR~~.

(5) **Fixed rate product --** A retail electric product with a term of at least three months for which the price (including ~~all~~ recurring charges ~~and ancillary service charges~~) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in the ~~Transmission and Distribution Utility (~~TDU~~)~~ charges, changes to the Electric Reliability Council of Texas (ERCOT) or Texas Regional Entity, Inc. administrative fees charged to loads or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.

(8) **Price --** The cost for a retail electric product that includes all recurring charges~~,~~ ~~including ancillary services,~~ excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax.

TEAM's redlined changes to Proposed Rule 25.475(c):

(1) **General Disclosure Requirements.**

(A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, TOSs, EFLs, ~~YRACs~~, and~~, if applicable, AORs~~~~YRACs~~YRACs distributed by a REP or aggregator must~~shall~~ be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to: . . .

(C) The TOS, EFL, and~~and~~ YRAC~~, and, if applicable, AOR~~ must~~shall~~ be provided to each customer upon enrollment. Each document must~~shall~~ be

provided to the customer whenever a change is made to the specific document and upon a customer's request, at any time free of charge.

(D) A REP must~~shall~~ retain a copy of each version of the TOS, EFL, and~~and~~ YRAC~~, and, if applicable, AOR~~ during the time the plan is in effect for a customer and for four years after the contract ceases to be in effect for any customer. REPs must~~shall~~ provide such documents at the request of the commission or its staff.

(2) General contracting requirements.

(A) Each~~A~~ TOS, EFL, and YRAC, ~~and, if applicable, AOR~~ must ~~YRAC shall~~ be complete, ~~shall~~ be written in language that is clear, plain and easily understood, and~~shall~~ be printed in paragraphs of no more than 250 words in a font no smaller than 10 point. References to laws including commission rules in these documents must~~shall~~ include a link or website~~internet~~ address to the full text of the applicable law or rule.

(3) Specific contract requirements.

[if (G) is not struck in its entirety, TEAM proposes:]

(G) A REP, aggregator, or broker may enroll a residential or small commercial customer in an indexed product or a product that contains a separate assessment of ancillary service charges only if the REP, aggregator, or broker includes in the customer's EFL ~~obtains before the customer's enrollment~~ an AOR in compliance with the requirements of this section.

(4) Website requirements.

(B) The EFL for each product mustshall be printable in no more than a two-page format. The EFL, TOS, and and YRAC, and, if applicable, AOR for any products offered for enrollment on the website mustshall be available for viewing or downloading.

F. Changes to Proposed Rule 25.475(e)(1) – related to notice for other products.

TEAM proposes the following clarifying changes to Proposed Rule section 25.475(e)(1) to conform the language regarding a customer's ability to receive contract expiration notices electronically with that in House Bill 16. Proposed Rule subsection (e)(2)(B) already mirrors the statute, so this change would ensure (e)(1) and (e)(2)(B) use consistent terminology:

TEAM's redlined changes to Proposed Rule 25.475(e)(1):

(1) Notice Timeline for Expiration of a Non-Fixed Rate Term Product.

For term products other than fixed rate products, the REP must send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer. The REP mustshall send the notice by mail to a residential customer or mustshall send the required notice to a customer's e-mail address if available to the REP and if the customer has requested to receive communicationscontract-related notices electronically from the REP. The REP mustshall send the notice to a small commercial customer by mail or may send the notice to the customer's email address if available to the REP and, if the customer

has requested to receive contract-related notices electronically. Nothing in this section precludes~~shall preclude~~ a REP from offering a new contract to the customer at any other time during the contract term.

G. Changes to Proposed Rule 25.475(e)(2) – to conform expiration-notices requirement amendments to text and intent of the statutes and House Bill 16.

TEAM proposes revisions to section 25.475(e) to make clear that the new fixed rate product expiration-notice requirements do not apply to small commercial customers. House Bill 16 included new contract expiration notice requirements for retail electric contracts for residential customers only. The Proposed Rule imposes the new contract expiration notice requirement to small business customers as well, by including small commercial customers in the new language. This expansion beyond the statutory requirement is costly and does not provide a commensurate benefit to the customer.

Additionally, TEAM proposes an addition to subsection (e)(2)(A) to promote that the contract expiration notices are sent to customers within a window that the customers would most benefit from. Specifically, TEAM proposes that for contracts with terms of 12 months or longer (e.g., 12, 24 or 36 months), that the REP be allowed to send the first contract expiration notice no later than 3 months prior to the contract end date. This would still accomplish the statutory objective of being within the last third of the contract term. Sending notices much earlier (e.g., months or even a year before contract end) would risk customers ignoring the notice because the contract end date would be so far away. Also, sending the notice too early creates customer confusion as to the timing of their contract expiration and applicability of early termination fees. A proposed edit follows.

In further addition, TEAM proposes that Proposed Rule subsection (e)(2)(C) be revised to conform with the wording in subsection (c)(3)(E) to clarify that the "sufficient expiration notice" referenced in this section is the final notice of contract expiration that contains the terms of the default renewal product, allowing the customer 30 days (for terms of more than 4 months) or 15 days (for terms of 4 or fewer months) to pick a new retail electric product or roll to the default product.

TEAM's redlined changes to Proposed Rule 25.475(e)(2):

~~(1)~~(2) Notice Timeline for Expiration of a Fixed Rate Residential Product.

(A) For residential customers with fixed rate products, the REP must provide the residential customer with at least three written notices of the date the fixed rate product will expire. The notices must be provided during the last third of the contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of the fixed rate contract period. For fixed rate contracts with a period 12 months or longer, the first notice may be provided no later than three months prior to the contract end date. For fixed rate contracts for a period:

(i) Of more than four months, the final notice must be provided at least 30 days before the date the fixed rate contact will expire.

(ii) Of four or fewer months, the final notice must be provided at least 15 days before the date the fixed rate contract will expire.

(B) The notices must be provided to the residential customer by mail at the residential customer's billing address, unless the residential customer has opted to receive communications electronically from the REP.

(C) If a REP does not provide the required notice of the expiration of a residential customer's fixed rate contract and the residential customer does not select another retail electric product before expiration of the fixed rate contract term, the REP must continue serving the residential customer under the terms of the fixed rate contract until the REP provides~~sufficient expiration~~ notice in accordance with applicable requirements of subsection (e)(2)(A)(i) or (ii)~~is provided~~ or the residential customer selects another retail electric product.

H. Changes to Proposed Rule 25.475(e)(3)– correct erroneous deletion.

TEAM proposes revising Proposed Rule subsection 25.475(e)(3)(B)(i), as it appears the word "visible" was erroneously struck from this section. Second, TEAM proposes including in Proposed Rule subsection 25.475(e)(3)(C)(vi) language like that in subsections (e)(3)(C)(v) and (e)(3)(C)(vii) that clarifies the information is to be provided in the final notice. TEAM's proposed changes to subsection (e)(3) follow.

TEAM's redlined changes to Proposed Rule 25.475(e)(3):

(3) Contract Expiration.

(B) Written notice of contract expiration . . .

(i) If notice is provided with a residential customer's bill, the notice must~~shall~~ be printed on a separate page. A statement must~~shall~~ be included in a manner readily ~~visible~~ visible on the outside of the envelope sent to a residential customers' billing address by mail and in the subject on the e-mail (if the REP sends the notice by e-mail) that states, "Contract Expiration Notice. See Enclosed."

(C) A written notice of contract expiration . . .

(v) The final notice provided pursuant to subsection (e)(3) must include a~~A~~ copy of the EFL for the default renewal product . . .

(vi) The final notice provided pursuant to subsection (e)(3) must include a~~A~~ statement that if the customer takes no action, service to the customer will continue pursuant to the EFL for the default renewal product . . .

(v) The final notice provided pursuant to subsection (e)(3) must include a~~A~~ statement that the default service is month-to month . . .

I. Changes to Proposed Rule 25.475(e)(4)– remove reference to AOR.

TEAM proposes deleting the reference to an AOR from Proposed Rule subsection 25.475(e)(4)(C), in accordance with TEAM's above-stated comments that House Bill 16 did not set forth an AOR requirement for any products other than wholesale indexed products and that even if the Commission decides to include an AOR requirement beyond House Bill 16, it should be included in the EFL. TEAM's proposed changes to subsection (e)(4) follow.

TEAM's redlined changes to Proposed Rule 25.475(e)(4):

(4) Affirmative Consent. . . .

(C) Indicate if the customer has received, or when the customer will receive copies of the TOS, ELF, ~~and~~ and YRAC~~, and, if applicable, AOR~~;

J. Changes to Proposed Rule 25.475(h)(4) – Your Rights as a Customer changes.

Proposed changes to subsection (h) implement provisions of the new statute to provide customers information from the TDU related to load shedding procedures. First, TEAM recommends that the PUC work with the utilities to develop standard information if possible related to load shedding procedures. If there are valid reasons to have different load shed procedures by utility region, TEAM would like to work with the Commission and utilities to standardize the message where possible. Clarity of communication and customer expectations on this item is key, and to the extent the message can be standardized, the better the customer will be informed.

The proposed rule would require utilities to develop such information and resources by September 1, 2021 and make the website address where such information can be viewed available to REPs. It is unclear to what extent utilities have already developed such information. To the extent possible, TEAM requests this messaging be consistent and clear for customers. The Commission should require utilities to develop this information with opportunity for REPs to review and comment on it. We would propose this be authorized by the Commission rather than a date prior to rule adoption.

TEAM's redlined changes to Proposed Rule 25.475(h)(4):

> (4) The YRAC must provide information the REP has received from the TDU pursuant to PURA §17.003(e) regarding the TDU's procedures for implementing involuntary load shedding initiated by the independent organization certified under PURA §39.151 for the ERCOT power region, and, if applicable, where any additional details regarding those procedures or relevant updates may be located. The REP may fulfill this requirement by providing a website address with the required information. As authorized by the commission, ~~E~~each TDU must develop such information and resources ~~by September 1, 2021~~ and make the website address where such information can be viewed available to REPs. A REP may provide this information at a website address other than the website addresses made available by the TDUs. A TDU or other entity providing a website address is required to update this information

K. Changes to Proposed Rule 25.475(j) – related to AORs for products other than wholesale indexed products.

As set forth previously, House Bill 16's language concerning the AOR is specific to wholesale indexed products, which are limited to large commercial customers. The Proposed Rule's proposed additions of AOR requirements for other products exceed the intent and text of House Bill 16. Thus, TEAM proposes that any rules pertaining to the AOR be limited to House Bill 16's text and intent – i.e., specific to wholesale indexed products for large commercial customers—and that rules outside that scope be struck. However, in the alternative event that the Commission decides to include AOR requirements for products other than the wholesale indexed

products contemplated by House Bill 16, then TEAM proposes modification to subsection 25.475(j) to allow the AOR to be provided in the EFL, rather than as a standalone document in enrollment. It also appears that subsection (j)(3) was misnumbered.

TEAM's *alternate* redlined changes to Proposed Rule 25.475(j):

> (j) Acknowledgement of Risk. Before a residential or small commercial customer's enrollment in an indexed product or a product that contains a separate assessment of ancillary service charges, an aggregator, broker, or retail electric provider must include~~obtain~~ an AOR in the customer's EFL, ~~signed by the customer, verifying~~ that the customer accepts the potential price risks associated with the product.
>
> (1) for indexed products other than wholesale indexed products . . .
>
> (2~~3~~) for products that contain a separate assessment . . .

L. Changes to Proposed Rule 25.479.

As set forth in Proposed Rule subsection 25.479(d), new public service notices in subsections (d)(1)-(4) would be required in the April and October bills. However, given the hurricane messaging requirements that are included in bills from May to November, as well as the new contract expiration notices that may be included in bills once this rule is adopted, TEAM recommends that the new public service notice requirements run in bill timeframes that are less "crowded" to better catch the customer's attention. Accordingly, TEAM proposes, as set forth below, that the new public service notice requirements instead be in April and December. TEAM further notes that it is important to ensure that electronic communication is allowed for these notices (subject to the customers' preference), so that customers may be most effectively and timely reached.

TEAM's redlined changes to Proposed Rule 25.475(d):

(d) **Public Service notices**. A REP must~~shall~~, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP must~~shall~~ provide these public service notices to its customers on its billing statements, as a separate document issued with its bill, by electronic communication, or by other acceptable mass communication methods, as approved by the commission. Additionally, in April and ~~October~~December of each year, or as otherwise directed by the commission, the REP must provide information to each customer along with the customer's bill about:

M. Changes to Proposed Rule 25.499– related to AORs for products other than wholesale indexed products.

TEAM appreciates that House Bill 16's changes relating to large commercial customers, are being housed in a rule section separate from that for residential and small commercial customers. As stated above, House Bill 16's language on AORs was specific to wholesale indexed products. Thus, TEAM proposes eliminating the portions of Proposed Rule subsections 25.499(a), (d), and (d)(2) that concern the imposition of an additional AOR rule for a product other than a wholesale indexed product.

TEAM's redlined changes to Proposed Rule 25.499:

(a) **Purpose**. This section establishes requirements for the offering of wholesale indexed products ~~and products containing separate assessment of ancillary services costs~~ to a customer other than a residential or small commercial customer.

(d) **Acknowledgement of Risk (AOR)** Before a customer other than a residential or small commercial customer is enrolled in a wholesale indexed product~~, or a product that contains a separate assessment of ancillary service charges,~~ an aggregator, broker, or REP must obtain an AOR, signed by the customer, verifying that the customer accepts the potential price risks associated with the product.

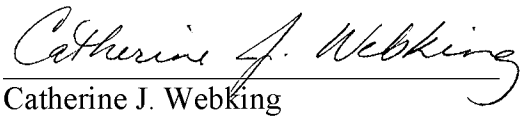
(1) For Wholesale Indexed Products . . .

~~(2) For products that contain a separate assessment of ancillary service charges that AOR must include the following statement in clear, boldfaced text: "I understand that my energy bill may include a separate assessment of ancillary service charges, which may cause my energy bill to be multiple times higher in a month in which ancillary services charges are high. I understand that I will be responsible for charges caused by fluctuations in ancillary service charges."~~

CONCLUSION

TEAM appreciates the opportunity to work with the Commission and all market participants on the Proposed Rule in furtherance of implementing the statutory language adopted by the legislature.

Respectfully submitted,



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